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IN THE

Supreme Court of the United States

No. 768

October Term, 1953.

KWIKSET LOCKS, INC.,

Petitioner,

vs.

CARL A. HILLGREN,

Respondent.

BRIEF OPPOSING PETITION FOR CROSS-WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent, Carl A. Hillgren, respectfully submits that the petition of Kwikset Locks, Inc., for a cross-writ of certiorari herein should be summarily dismissed because:

I. No jurisdiction and no justification therefor has been shown, since said petition shows:

1. No diversity of decision and no conflict between the decisions of two Courts of Appeal on the same matter.

   (U. S. Supreme Court Rule 38-5(b).)

2. No decision by the Court of Appeals of "an important question of local law in a way probably in conflict with applicable local decisions."

   (U. S. Supreme Court Rule 38-5(b).)

3. No decision by the Court of Appeals of "an important question of federal law which has not been, but should be, settled by this court."

(U. S. Supreme Court Rule 38-5(b).)

4. No decision by the Court of Appeals of "a federal question in a way probably in conflict with applicable decisions of this court."

(U. S. Supreme Court Rule 38-5(b).)

5. No evidence whatsoever that the Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this court's power of supervision."

(U. S. Supreme Court Rule 38-5(b).)

II. The decision of the Court of Appeals on the cross-appeal in this case is *correct* on its merits and is fully substantiated and justified by the record herein and by the law applicable thereto.

III. The petition for a *cross*-writ of certiorari herein is not only wholly unfounded in fact and in law, as set forth above, but, also in truth and in fact, it is merely an attempt by Kwikset Locks, Inc. to confuse and muddy the true issues involved in the petition for a writ of certiorari heretofore filed herein by Carl A. Hillgren, by a species of recriminatory contention that has absolutely nothing to do with the pending petition of Petitioner Carl A. Hillgren herein, which is well founded in fact and in law, as is fully shown in the petition of Carl A. Hillgren herein.

I. No Jurisdiction and No Justification Has Been Shown for the Petition of Kwikset Locks, Inc., for a Cross-Writ of Certiorari Herein Because:

1. No Diversity of Decision and No Conflict Between the Decisions of Two Courts of Appeal on the Same Matter Has Been Shown to Be Present in This Cross-appeal.

This first ground for issuing a writ of certiorari that is stated in Rule 38-5(b) of the Rules of the Supreme Court is clearly not present in the cross-appeal in this case, as the record shows no other case in which the cross-appeal Patent, No. 2,489,160, was in issue and certainly it shows no decision by any court of appeals on said Patent No. 2,489,160 other than the decision of the NINTH Court of Appeals in this case.

2. No Decision by the Court of Appeals of "an Important Question of Local Law in a Way Probably in Conflict With Applicable Local Decisions" Has Been Shown to Be Present in This Cross-appeal.

This second possible basis for a writ of certiorari stated in section 5(b) of Rule 38 of the Rules of the Supreme Court is also clearly not present in the cross-appeal in this case because NO LOCAL LAW is involved or even mentioned in the cross-appeal herein, or even in the entire record herein.

Section 5(b) of Supreme Court Rule 38 has been cited ONLY ONCE, according to "Shepard's United States Citations," in a case that did not involve a "conflict of lower court decisions" under the other divisions of Section 5(b), and that case furnishes no comfort whatsoever to Kwikset in the present case. The citation in question is

in *Chapman v. Federal Power Comm'n,* 345 U. S. 155, decided March 16, 1953, in which this Court said:

> "We granted Certiorari 343 U. S. 941. The cases present QUESTIONS OF IMPORTANCE in that they involve . . . the development of NATIONAL WATER RESOURCES.
>
> "Determination of the issues MAY AFFECT A SUBSTANTIAL NUMBER OF IMPORTANT POTENTIAL SITES for the development of hydro-electric power. *Cf.* Rules Sup. Ct. 38(5)(b)."

Certainly there is NO such "QUESTION OF IMPORTANCE" in the Cross-writ application herein, THOUGH THERE OBVIOUSLY ARE QUESTIONS OF MUCH GREATER IMPORTANCE AFFECTED BY THE ISSUES PRESENTED BY Petitioner HILLGREN IN HIS APPLICATION FOR A WRIT OF CERTIORARI NOW PENDING IN THE MAIN CASE HEREIN.

3. No Decision by the Court of Appeals of "an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court" Has Been Shown to Be Present in this Cross-appeal.

This third ground for the issuing of a writ of certiorari by the Supreme Court, that is stated in Section 5(b), Rule 38 of the Rules of the Supreme Court, is also CLEARLY NOT PRESENT in the cross-appeal in this case, as is perhaps most clearly and emphatically shown by the fact that Cross Petitioner Kwikset Locks, Inc. DOES NOT MENTION ANYWHERE IN ITS "PETITION FOR CROSS-WRIT OF CERTIORARI" HEREIN ANY "IMPORTANT QUESTION OF FEDERAL

LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT."

Since Petitioner Kwikset Locks, Inc. MENTIONS NONE IT MUST BE PRESUMED THAT NONE EXISTS!

The only questions mentioned by Petitioner Kwikset Locks, Inc. in its Petition for a Cross-writ of certiorari herein, (those reviewed at pages 4 and 5 of its petition), are NOT EVEN QUESTIONS OF LAW. THEY ARE ALL QUESTIONS OF FACT, NAMELY "HOW IS THE ACCUSED CONSTRUCTION MADE?", etc.

The "important questions of federal law, which have not been, but should be, settled by this court" that are fully shown by Petitioner Carl A. Hillgren in his "Petition for Writ of Certiorari with Brief in Support Thereof" and the "Appendix" thereto, which are not denied, refuted or rebutted in Respondents Kwikset Locks, Inc. *et al.'s* "Brief . . . in Opposition" thereto are strictly limited to the MAIN case and Petitioner Carl A. Hillgren's Petition herein and will NOT CONFER JURISDICTION ON THE CROSS-APPEAL NOR ON CROSS PETITIONER Kwikset Locks, Inc.'s "Petition for a Cross-writ of Certiorari" herein.

In other words, if this Court in its wisdom and discretion grants the petition of Carl A. Hillgren for a writ of certiorari in the main case herein, in order that it may promulgate its ruling on the three IMPORTANT exceptions to this Court's ruling in the *Great Atlantic and Pacific Tea Co.* case, 340 U. S. 147, that have been decided by various courts of appeal, but have not been but should be settled by this Court, such a writ of certiorari

in the main case herein WILL NOT CARRY WITH IT ON ITS COAT TAILS, SO TO SPEAK, THE PETITION FOR A CROSS-WRIT OF CERTIORARI FILED HEREIN BY KWIKSET.

Kwikset's wishful thinking of "what is sauce for the goose is sauce for the gander" will not confuse or deceive this Court as there is NO CONNECTION WHATSOEVER BETWEEN THE MAIN CASE AND THE COUNTERCLAIM HEREIN.

This third ground for certiorari, as stated in Rule 38-5(b) of the rules of this Court, is, therefore, clearly NOT PRESENT in the Cross-complaint part of this case.

4. No Decision by the Court of Appeals on "a Federal Question in a Way Probably in Conflict with Applicable Decisions of This Court" Has Been Shown to be Present in this Cross-appeal.

This fourth ground for issuing a writ of certiorari by the Supreme Court that is stated in Section 5(b) of Rule 38 of the Rules of the Supreme Court is CLEARLY NOT PRESENT in this case:

a. First: because no FEDERAL QUESTION of GREAT PUBLIC MOMENT has been decided by the Court of Appeals on the CROSS-appeal herein in probable conflict with any applicable decision of this Court. It MERELY DECIDED A SIMPLE, ORDINARY, LOCAL QUESTION OF NON-INFRINGEMENT.

b. Second: because no "decisions of this (Supreme) Court" have been cited or "shown" by Kwikset to be either "applicable" or "in conflict" with the decision of the Court of Appeals on the CROSS-appeal in this case.

In the first place, the Court of Appeals in the CROSS-appeal in this case decided a SIMPLE, ORDINARY, LOCAL QUESTION OF INFRINGEMENT—it decided that Hillgren's accused device DOES NOT INFRINGE BECAUSE IT OMITS ONE OR MORE ELEMENTS THAT ARE CONTAINED AS LIMITATIONS IN EACH OF THE CLAIMS IN ISSUE ON THE CROSS-COMPLAINT, WITHOUT SUBSTITUTING THEREFOR ANY "EQUIVALENT."

OMISSION OF AN ELEMENT FROM A CLAIM IS A SIMPLE, LOCAL QUESTION OF INFRINGEMENT.

There is no way, by any kind of devious word twisting, that Kwikset can make a FEDERAL QUESTION OF NATIONAL PUBLIC MOMENT OUT OF THAT SIMPLE, LOCAL QUESTION.

HILLGREN OMITTED ONE OF THE ELEMENTS OF EACH KWIKSET CLAIM WITHOUT SUBSTITUTING ANY "EQUIVALENT" FOR IT, AND THEREFORE HE DID NOT INFRINGE.

It is as simple as that—and no verbal fireworks or legal alchemy can change that simple, local question into a FEDERAL QUESTION OF GREAT PUBLIC MOMENT.

Secondly, even if a Federal question of great national public moment HAD been decided by the Court of Appeals on the cross-appeal herein, that fact alone COULD NOT FORM THE BASIS FOR GRANTING A CROSS-WRIT OF CERTIORARI HEREIN UNDER THIS FOURTH GROUND STATED IN SECTION 5 (b) OF RULE 38 OF THE RULES OF THIS COURT

UNLESS SUCH A DECISION IS SHOWN BY KWIKSET TO BE "PROBABLY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT." (Rule 38-5(b), U. S. Supreme Court Rules.)

Cross-Writ Petitioner Kwikset DOES NOT CITE ANY DECISIONS OF THIS COURT, NOR EVEN ASSERT THAT THERE ARE ANY DECISIONS OF THIS COURT THAT ARE "PROBABLY IN CONFLICT" WITH THE DECISION OF THE COURT OF APPEALS ON THE CROSS-APPEAL HEREIN THAT HILLGREN DOES NOT INFRINGE THE CROSS-COMPLAINT PATENT HEREIN BECAUSE HILLGREN OMITS ONE OR MORE ELEMENTS FROM EACH CLAIM IN ISSUE WITHOUT SUBSTITUTING ANY EQUIVALENT FOR SAID OMITTED ELEMENTS.

This fourth ground for certiorari is, therefore, clearly NOT PRESENT IN THIS CROSS-APPEAL.

5. No Evidence Whatsoever That the Court of Appeals "Has so Far Departed From the Accepted and Usual Course of Judicial Proceedings . . . as to Call for an Exercise of This Court's Power of Supervision" Has Been Shown to Be Present in this Cross-appeal.

Stripped of legal verbiage, the decision of the Court of Appeals on the cross-complaint meticulously followed "the accepted and usual course of judicial proceedings" by making the following successive findings or rulings:

a. "A district court's finding of infringement is generally considered to be a finding of fact that may not be set aside unless clearly erroneous." (Citing Rule 52(a), Federal Rules of Civil Procedure and cases following it.) [R. p. 910.]

This rule says ON ITS FACE that a fact finding of infringement CAN be set aside by the Court of Appeals IF IT IS CLEARLY ERRONEOUS.

This just happens to be one of those RARE cases where the District Court's finding of infringement WAS "CLEARLY ERRONEOUS," as is seen by the drawings on page 911 of the record WHICH CONCLUSIVELY SHOW THAT HILLGREN OMITS "CURL 19," which is an element of each Kwikset claim and therefore HILLGREN DOES NOT INFRINGE.

The Court of Appeals, therefore, would have been fully justified in reversing the District Court's holding of infringement under Rule 52(a) of the Federal Rules of Civil Procedure, *supra,* on the plain, simple and obvious, though "unusual," ground that the District Court's fact-finding of infringement WAS IN FACT "CLEARLY ERRONEOUS."

However, in an abundance of caution, and, undoubtedly in order to unquestionably follow "THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS" (Rule 38-5(b), Supreme Court Rules, *supra*), the Court of Appeals, with a fine show of judicial restraint, refrained from placing its decision on the cross-complaint on this "UNUSUAL" ground that the District Court's fact-finding of infringement was "CLEARLY ERRONEOUS," and, instead, placed its decision upon a more "USUAL" ground, namely,

b. "It is well settled that where, as here, there is no dispute as to the evidentiary facts, and the

record and exhibits enable us to clearly comprehend the nature both of the process patented and the alleged infringing process, the question of infringement resolves itself into one of LAW, depending upon a comparison of the two processes and the correct application thereto of the rule of EQUIVALENCY." [R. pp. 910-911.]

The Court thereupon showed CLEARLY and CONCLUSIVELY that Hillgren is NOT the EQUIVALENT of Kwikset. [R. pp. 911-913, incl.]

Here, again, the Court of Appeals did not "depart" in the least from the "accepted and usual course of judicial proceedings." (Supreme Court Rule 38-5(b), *supra.*)

By time-honored text-book definition there are two tests of EQUIVALENCY:

"(a) Identity of function;

(b) Substantial identity of way of performing that function." (Deller's Walker on Patents, Sec. 466, at p. 1703.)

The Court of Appeals showed fully and convincingly that the Hillgren process and structure DO NOT MEET THESE TESTS OF EQUIVALENCY [R. pp. 911-913] as follows:

i. "In the Hillgren knob the edge of the shell DOES NOT CURL, but rather directly faces the insert. See diagram in margin, 18. Thus, the 'curl' or 'annular portion' [*note 19, R. p. 911, shows that "it would be inaccurate to extend that definition*

to the contact edge of the Hillgren shell"] which is a distinguishing characteristic of the Kwikset knob, IS ABSENT from the Hillgren knob." [R. pp. 911-912.]

ii. "The Kwikset knob has a concave area on the insert which serves the . . . purpose . . . of establishing a contact area between the shell and the insert in their grasp of the cap flange." [R. p. 912.]

The Court of Appeals indicates clearly that this function is NOT PRESENT in Hillgren. [R. p. 912.]

This is also PROVEN CONCLUSIVELY by Kwikset's own "EXHIBIT D," which Kwikset stated "shows the insert and ferrule in assembled relationship prior to the application of the cap." [R. p. 60.] This Exhibit D shows that THERE IS SO MUCH SPACE between the insert and the ferrule that IT WOULD BE PHYSICALLY IMPOSSIBLE FOR THE HILLGREN SHELL EDGE [18 in Hillgren drawing, R. p. 911] TO PERFORM THE ABOVE REQUIRED KWIKSET FUNCTION "OF ESTABLISHING A CONTACT AREA BETWEEN THE SHELL AND THE INSERT IN THEIR GRASP OF THE CAP FLANGE." [R. p. 912, *supra.*]

iii. "In the Kwikset knob, it is important that *initially* there be a tight fit between the shell curl and the insert in order that sufficient spring-back be created in the shell curl to hold the cap in place." [R. pp. 912-913.]

The Court of Appeals clearly showed that this Kwikset function, and way of performing it (and hence

"equivalency"), is CLEARLY ABSENT FROM HILLGREN, as follows:

> "By way of comparison, in the assembly of the Hillgren knob THERE IS A SPACE between the insert and the shell edge" (18). [R. p. 913.]

This "SPACE" between the Hillgren insert and shell edge is much GREATER than the thickness of the flange on the Hillgren cap, as is seen by merely comparing the flange on the Hillgren cap with the "SPACE" between the Hillgren insert and shell edge in Exhibit D.

This means that if the flange on the Hillgren cap is inserted between the Hillgren insert and shell in Exhibit D there will be no Kwikset function of gripping the flange of the cap between the insert and the shell, as is shown by the excerpts from the record in the next sub-section, immediately hereinbelow.

> iv. "An *inward lateral pressure* is placed upon the HILLGREN shell to keep its edge in position while the cap flange is being shaped to embrace it." [R. p. 913.]

This is a Hillgren FUNCTION and WAY OF PERFORMING IT that is NOT PRESENT IN Kwikset.

The record clearly shows the facts:

> "Q. We have an exhibit here . . . Exhibit D . . . At THAT STAGE is there any PRESSURE between the circular opening of THE SHELL and THE INSERT? A. No." [R. pp. 778-779.]

> "Q. At that point does the flange of the cap slide EASILY between the INSERT and the outside SHELL as shown in Exhibit D? A. YES. IT FITS FREELY INTO THAT.

"Q. So that there is MORE space between the insert and the shell than the THICKNESS OF THE FLANGE on the cap? A. That's right." [R. p. 779.]

The die that is used in the Hillgren process to furnish the "INWARD LATERAL PRESSURE" referred to in the above heading [R. p. 913] is CLEARLY DESCRIBED in the record, as follows:

"Q. Is there a die that is used to COMPRESS THE SHELL? A. Yes.

"Q. Describe that die. A. Well, it is just a die about the same shape as this knob and the cap is put in there and it is brought down, IT PUSHES the cap down and THE SHELL IN at the same time.

Q. BEFORE that die is used, is there any pressure between the shell and the cap, or is it a loose fit? A. It is a LOOSE FIT.

Q. And the TIGHT FIT between the shell and the cap is ACQUIRED BY THAT DIE, is that right? A. Yes, that's right." [R. p. 780.]

The above is the UNCONTROVERTED testimony of the respondent Hillgren's witness.

Cross-complainant Kwikset DID NOT OFFER A SINGLE WORD OF TESTIMONY BY A SINGLE ONE OF ITS WITNESSES TO PROVE ANY OTHER MODE OF OPERATION OR WAY OF PERFORMING THE HILLGREN FUNCTION OF JOINING THE HILLGREN CAP AND SHELL.

The above shows CONCLUSIVE NON-INFRINGEMENT BY HILLGREN, because it SHOWS THAT HILLGREN DOES NOT HAVE THE SAME FUNC-

TIONS, NOR SUBSTANTIALLY THE SAME WAY OF PERFORMING THOSE FUNCTIONS AS KWIKSET, AND, THEREFORE, UNDER THE ABOVE WELL-KNOWN FUNDAMENTAL TESTS OF "EQUIVALENCY":

HILLGREN IS NOT THE "EQUIVALENT" OF KWIKSET.

For the above reasons the Court of Appeals made its final ruling on the cross-appeal as follows:

> v. "Since the Hillgren knob construction is based solely upon the tongue-in groove principle in such a way as to eliminate the need for spring-back pressure employed in the Kwikset knob to hold the cap in place. WE CONCLUDE THAT THE HILLGREN KNOB DOES NOT INFRINGE THE KWIKSET PATENT." [R. p. 913.]

Hillgren respectfully submits that the above decision of the Court of Appeals on the cross-complaint herein does NOT in any way "DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS" and does NOT in any way "call for an exercise of this Court's power of supervision." (U. S. Supreme Court Rule 38-5(b).)

This fifth ground for certiorari that is stated in Rule 38-5(b) of the rules of this Court is, therefore, CLEARLY NOT PRESENT in the cross-complaint case herein.

Section Summary.

Thus, clearly, the petition of Kwikset Locks, Inc., for a CROSS-writ of certiorari herein should be SUMMARILY DENIED AND DISMISSED because not only has no jurisdiction and no justification been shown for it by Kwikset, but Hillgren has fully and affirmatively shown hereinabove that EACH ONE OF THE FIVE (5) GROUNDS FOR GRANTING WRITS OF CERTIORARI THAT ARE STATED IN SECTION 5(b) OF RULE 38 OF THE RULES OF THE SUPREME COURT IS CLEARLY ABSENT IN THE CROSS-COMPLAINT CASE HEREIN.

II. The Decision of the Court of Appeals on the Cross-Appeal in This Case Is in Fact Correct on Its Merits and Is Fully Substantiated and Justified by the Record Herein and by the Law Applicable Thereto.

The Court of Appeals' decision on the Cross-Complaint was to REVERSE THE DISTRICT COURT'S DECISION ON THE QUESTION OF INFRINGEMENT.

The only possible ultimate reason for granting the CROSS-WRIT herein, therefore, would be to permit the Supreme Court to reverse the Court of Appeals ON THE QUESTION OF INFRINGEMENT.

But REVIEW OF DECISIONS ON QUESTIONS OF INFRINGEMENT ARE NOT THE BASIS OF THE GRANTING OF WRITS OF CERTIORARI WITH ONE SINGLE EXCEPTION, WHICH IS NOT PRESENT IN THIS CASE, NAMELY, A DIVERSITY OF DECISION OR A CONFLICT BETWEEN THE DECISIONS OF TWO COURTS OF APPEAL ON THE SAME MATTER, *i. e.,* ON THE SAME ISSUE OF INFRINGEMENT.

In this case the District Court said that Hillgren DID NOT OMIT AN ELEMENT from the claims, and the Court of Appeals RULED THAT THE DISTRICT COURT WAS CLEARLY WRONG and that Hillgren DID OMIT AN ELEMENT FROM EACH OF THE CLAIMS, AND DID NOT SUBSTITUTE AN "EQUIVALENT" THEREFOR.

This is a clear conflict of decisions on a question of infringement BUT IT IS NOT BETWEEN TWO

COURTS OF APPEAL SO NO GROUND FOR CERTIORARI IS PROVIDED THEREBY.

FURTHERMORE THE COURT OF APPEALS WAS RIGHT ON THIS QUESTION of infringement, as is most clearly seen by MERELY COMPARING THE COURT OF APPEALS' DECISION ON THE CROSS-COMPLAINT [R. pp. 911-913] with the ACTUAL EXHIBITS REFERRED TO THEREIN SHOWING THE STAGES OF CONSTRUCTION OF THE ACCUSED HILLGREN DEVICE, PARTICULARLY EXHIBIT D.

As the Court of Appeals correctly said "there is no dispute as to the evidentiary facts, and the record and exhibits enable us to clearly comprehend the nature both of the process patented and the alleged infringing process." [R. p. 910.]

The two drawings on page 911 of the record, Kwikset on the left and Hillgren on the right, TELL THE WHOLE STORY!

The shell (18 in both drawings) has a curl 19 at the outer end of Kwikset BUT THIS CURL 19 IS NOT PRESENT IN HILLGREN!

Instead, as the Court of Appeals correctly describes it, "in the Hillgren knob the edge of the shell DOES NOT CURL, but rather DIRECTLY faces the insert. See diagram in margin 18." [R. p. 911.]

THIS IS THE HEART OF THIS CROSS-APPEAL CASE!

All of Kwikset's claims are limited to this *curl 19* which is NOT PRESENT in Hillgren. The Kwikset claims refer to curl 19 as either a curl or an "annular"

portion which the Court of Appeals, in note 19 on page 911 of the record, says "means ring shaped," according to Webster's Dictionary. The Court of Appeals correctly ruled that "IT WOULD BE INACCURATE TO EXTEND THAT DEFINITION TO THE CONTACT EDGE OF THE HILLGREN SHELL." [R. p. 911.]

Also the Court of Appeals CORRECTLY RULED that "THERE IS A SUBSTANTIAL DIFFERENCE IN THE PRINCIPLES OF CONSTRUCTION OF THE TWO KNOBS WHICH IS REFLECTED IN THE METHODS BY WHICH THEY ARE ASSEMBLED, to wit:

> "IN THE KWIKSET KNOB, IT IS IMPORTANT THAT INITIALLY THERE BE A TIGHT FIT BETWEEN THE SHELL CURL AND THE INSERT IN ORDER THAT SUFFICIENT SPRING-BACK BE CREATED IN THE SHELL CURL TO HOLD THE CAP IN PLACE." [R. pp. 912-913.]

This "CURL 19" and its "SPRING-BACK," created by the TIGHT FIT between the SHELL CURL and the INSERT, is found by the Court of Appeals to be CLEARLY NOT PRESENT IN HILLGREN.

THIS IS THE REAL DECISION OF THE COURT OF APPEALS ON THE CROSS-COMPLAINT.

A SIMPLE DECISION ON NON-INFRINGEMENT BASED ON

(1) OMISSION OF AN ELEMENT (CURL 19),

and

(2) NO EQUIVALENCY BETWEEN THE OMITTED ELEMENT ("CURL 19"), AND THE "CONTACT EDGE OF THE HILLGREN SHELL" WHICH, AS THE COURT OF APPEALS SAID "DOES NOT CURL, BUT RATHER DIRECTLY FACES THE INSERT," [R. p. 911], IS ALL THAT THE COURT OF APPEALS DECIDED ON THE CROSS-APPEAL!

No question of great public importance, no issue of great moment, and no conflict with any decision of any Court of Appeals, or of the Supreme Court, is in any way involved in this simple decision of NON-INFRINGEMENT because an element of the claims is omitted without an equivalent thereof being substituted!

The Petition for a cross-writ is thus so obviously UNFOUNDED that it naturally leads one to wonder "WHY WAS IT FILED?" Why did Kwikset WASTE THE MONEY that it obviously cost to prepare and print the petition for a cross-writ? WHAT WAS THE MOTIVE?

THERE IS ONLY ONE ANSWER.

Kwikset never intended to sue Hillgren. It falsely represented to the Patent Office that Hillgren infringed, in order to speed up the issuance of its patent. [See Kwikset file wrapper, Ex. 6, R. p. 52]. Then when the patent issued, on November 22, 1949, Kwikset DID NOT SUE HILLGREN AND NEVER WOULD HAVE DONE ANYTHING IF HILLGREN HAD NOT FILED THE COMPLAINT HEREIN ON FEBRU-

ARY 6, 1950. [R. pp. 3-4.] EVEN THEN KWIKSET MERELY FILED A COUNTERCLAIM ON MARCH 22, 1950 [R. pp. 5-10], IN HILLGREN'S VALID AND LEGITIMATE SUIT AGAINST KWIKSET EXACTLY FOUR (4) MONTHS AFTER KWIKSET'S PATENT ISSUED, AND A MONTH AND A HALF AFTER THE COMPLAINT WAS FILED HEREIN, FOR THE SOLE PURPOSE OF MISLEADING OR DIVERTING THE COURT AWAY FROM HILLGREN'S VALID MAIN CASE.

KWIKSET DID NOT FOOL THE DISTRICT COURT!

BUT IT DID MISLEAD THE COURT OF APPEALS INTO FALLING INTO ERROR IN THE MAIN CASE.

NOW IT IS TRYING TO MISLEAD THIS COURT BY ITS SILLY AND UTTERLY UNFOUNDED "CROSS-WRIT" APPLICATION WHICH WAS FILED BY KWIKSET IN A LAST DESPERATE ATTEMPT TO TRY TO GET THIS COURT TO DENY HILLGREN'S WELL-FOUNDED AND WELL-DOCUMENTED PETITION FOR CERTIORARI IN THE MAIN CASE HEREIN.

HILLGREN DOES NOT BELIEVE THAT THIS COURT WILL BE MISLED, AS WAS THE COURT OF APPEALS, BY THIS UNFOUNDED RECRIMINATORY "CROSS-WRIT" CONTENTION—A SORT OF "IN PARI DELICTU" PLEA WHICH DOES NOT IN FACT EXIST, AS HILLGREN WILL NOW SHOW.

III. The Petition for a Cross-writ of Certiorari Herein Is Not Only Unfounded in Fact and Law, as Is Fully Above Shown, but It Is in Truth and in Fact Merely an Attempt to Confuse the True Issues in the Petition for Certiorari Already on File in the Main Case Herein by a Species of Fictitious Recriminatory Contention That Has Absolutely Nothing to Do With the Petition for Certiorari in the Main Case Herein Which is Well Founded in Truth and in Law—and Which Is Not Seriously Contested or Even Threatened—Except by This Fictitious Petition for a Cross-writ.

The foregoing sections of this brief show that the petition for a CROSS-writ of certiorari herein is so utterly and obviously unfounded that it must have been filed for some other purpose than to secure its granting.

That other purpose, or ULTERIOR MOTIVE, to use a more popular name for it, becomes glaringly apparent when one reviews the "Brief for Respondents Kwikset Locks, Inc., *et al.*, in Opposition to Petition for Writ of Certiorari" filed herein by Kwikset.

In short, Kwikset's "Brief" in purported opposition to Hillgren's Petition DOES NOT CONTAIN A SINGLE REPLY TO, NOR EVEN A MENTION OF, ANY OF THE POINTS MADE IN HILLGREN'S PETITION!

Hillgren can only surmise that this is because the points made in his petition are UNANSWERABLE.

Confronted wtih that situation Kwikset resorted to the familiar defendant's device: when you have no defense, TRY THE PLAINTIFF!

Hence, Kwikset filed its fictitious petition for a CROSS-writ.

Conclusion.

The Supreme Court should, therefore, grant the petition for a writ of certiorari prayed for by Petitioner Carl A. Hillgren, herein, for the reasons stated in his "Petition" and its "Appendix," and not even answered in respondent Kwikset's "Brief," and should also summarily dismiss and deny the utterly unfounded and fictitious petition of Kwikset Locks, Inc. for a *cross*-writ of certiorari herein.

Respectfully submitted,

HAMER H. JAMIESON,

Attorney for Petitioner and Respondent Carl A. Hillgren.